

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SERGIO IVAN GUTIERREZ,

Plaintiff,

No. C 08-00247 JSW

v.

OPTION ONE MORTGAGE,

Defendant.

**ORDER DENYING
APPLICATION TO PROCEED *IN*
FORMA PAUPERIS AND
DISMISSING COMPLAINT**

On January 14, 2008, Plaintiff Sergio Ivan Gutierrez filed a complaint and an application to proceed *in forma pauperis*. Courts must deny *in forma pauperis* applications under certain circumstances, including when the allegation of poverty is untrue or the underlying complaint sought to be filed is frivolous or when it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2).

First, the Court finds that Plaintiff's claim of poverty is untrue. Plaintiff maintains a job with a large enough salary and owns two cars and a valuable home. The claim of poverty is unconvincing. On this basis alone, the application to proceed *in forma pauperis* is DENIED.

In addition, in contravention of Federal Rule of Civil Procedure 8(a), Plaintiff failed to file a pleading setting forth the grounds upon which this Court has jurisdiction, "a short and plain statement of the claim showing that the pleader is entitled to relief, . . . and a demand for judgment for the relief the pleader seeks." Plaintiff's complaint is disjointed to the point of being incoherent and unintelligible. It is impossible to discern from his complaint: (1) the underlying factual basis for his suit; (2) the legal theories under which he seeks relief; or (3)

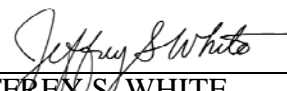
1 what relief he is requesting. The Court cannot discern the basis of the complaint or the claim
2 for jurisdiction. There is some allusion to admiralty law which falls under federal jurisdiction,
3 but the allegations maintain that Plaintiff's body is a vessel and therefore that admiralty law
4 applies. This is unsupported by law.

5 For these reasons, Plaintiff's application to proceed *in forma pauperis* is HEREBY
6 DENIED WITHOUT PREJUDICE and the Complaint is DISMISSED WITH LEAVE TO
7 AMEND. If Plaintiff wishes to pursue this action, he must file an amended complaint setting
8 forth a cognizable legal claim by **February 8, 2008**. Plaintiff may not file another application
9 to proceed *in forma pauperis* as the Court finds his claim of poverty to be untrue. Failure to file
10 a cognizable legal claim by this date shall result in **dismissal** of this action. The Court advises
11 Plaintiff that a Handbook for Pro Se Litigants, which contains helpful information about
12 proceeding without an attorney, is available through the Court's website or in the Clerk's office.

13 In light of this Order, the date for the Case Management Conference, previously set for
14 April 28, 2008 at 1:30 p.m., is VACATED and will be reset by the Court at a later date if
15 necessary.

16
17 **IT IS SO ORDERED.**

18 Dated: January 16, 2008

19 
20 _____
21 JEFFREY S. WHITE
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SERGIO IVAN GUTIERREZ,
Plaintiff,

Case Number: CV08-00247 JSW

CERTIFICATE OF SERVICE

v.

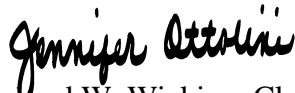
OPTION ONE MORTGAGE et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 16, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Sergio Ivan Gutierrez
c/o 342 Athens Street
San Francisco, CA 94111

Dated: January 16, 2008


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk